

# MUTUAL COMMITMENT PROGRAM

## MASTER AGREEMENT

### **A. Objective**

The objective of the Mutual Commitment Program (MCP, the “Program”) is to enable Union Pacific (UP) and its Intermediary Customers (Customers) to provide reliable intermodal container capacity to Shippers in exchange for a committed level of business from the Shipper. Customers and Shippers who participate in MCP will benefit from the assurance of access to reliable container capacity as well as stable and predictable rail pricing. The purpose of this document is to describe the Program, including the general obligations of and benefits to the participants.

*Note: Capitalized terms are defined at the end of this document in Section I.*

### **B. The Agreement**

An MCP Agreement (“Agreement”) will be established between UP and the Customer (bi-party agreement), or between UP, the Shipper, and one or more Intermediary Customers (tri-party or multi-party agreement). Each MCP Agreement is defined and documented by this MCP Master Agreement (“Master Agreement”), a MCP Agreement Term Sheet (“Term Sheet”), and an MCP Price Document. The Term Sheet defines the following:

1. The Commitment Term.
2. The annualized volume of business awarded to UP and the Customer(s) by the Shipper during the commitment term (the Award Volume).
3. The ramp-to-ramp and/or door-to-door rail price (the Base Load Price) for each shipment Lane.
4. A description of the method used for calculating Base Load Volume.
5. Terms defining price and capacity for volume tendered above the Surge Volume Allowance.
6. A Weekly Volume Forecast for each Origin Market (to be provided at the option of the Customer and/or Shipper).

UP will publish an MCP price document for the Customer to document the prices and Commitment Term. All MCP price documents are subject to the terms and conditions of this MCP Master Agreement as well as UP’s Master Intermodal Transportation Agreement (MITA). Any exceptions to terms of this Master Agreement must be in the Term Sheet.

### **C. Shipment Volume**

1. The Customer and Shipper agree to tender to UP the Award Volume for each origin-destination pair as defined in the Term Sheet.
2. One of three methods will be used to calculate the weekly Base Load Volume. The choice of methods will be determined for each separate MCP Agreement and will be



documented in the Term Sheet. Regardless of the calculation method, Base Load Volume will no longer change once a market is declared constrained.

a) Year-to-Date Method:

1. For Agreements with a Commitment Term beginning in a prior calendar year, Base Load Volume equals average Weekly Shipment Volume tendered since the beginning of the current calendar year.
2. For existing Agreements that are renewed in the current calendar year, method a.1) above will be used to determine Base Load Volume with an adjustment for changes to the Award Volume in the current year.
3. For Agreements that begin in the current calendar year, Base Load Volume equals average Weekly Shipment Volume tendered since the beginning of the current Commitment Term.

b) Defined Period Method: Base Load Volume equals Average Weekly Shipment Volume tendered over a defined number of immediately-prior weeks (e.g., prior 8 weeks).

c) Customized Method: Base Load Volume equals Average Weekly Shipment Volume tendered over a defined, but not necessarily recent, time period (e.g., the 2<sup>nd</sup> quarter, or, the first six months of the year).

3. When an Origin Market becomes Constrained Base Load Volume will be calculated by UP and provided to the Customer. The Base Load Volume will be fixed as long as the Origin Market remains constrained. For methods (a) and (b) above the calculation period will end on the last day of the week immediately prior to the announcement date of the Constrained Market condition.
4. For purposes of measuring Weekly Shipment Volume and applicable Volume Surcharges, each week will be assumed to begin Sunday at 12:00 a.m. and end the following Saturday at 11:59 p.m. Week 1 will begin Sunday January 1, 2012. For ramp-to-ramp shipments a load will be deemed to be tendered to UP when it is in-gated. For door-to-door shipments, a load will be deemed to be tendered to UP when it is picked up from the shipper.
5. The Customer and/or Shipper agree to update the Weekly Volume Forecast as necessary to reflect expected shipping patterns. Failure to provide an accurate Weekly Volume Forecast may result in UP's inability to provide sufficient capacity to handle surges in demand above the Base Load Volume.

## **D. Container Capacity**

1. Customer and UP will provide container capacity required to handle Shipper's Weekly Shipment Volume in the following manner:



- a) Customer will first utilize all its internal sources of container capacity including inbound containers, street capacity and street interchanges.
  - b) To the extent Customer's internal sources of container capacity are insufficient to meet the Shipper's requirements, UP will supply Customer with additional container capacity through the REZ-1 container reservation process.
2. Availability of capacity to handle Shipper volume surges may be limited in Constrained Markets. UP will allocate surge capacity based on availability, consistency of the Shipper's Weekly Shipment Volume and the accuracy of the Shipper's Weekly Volume Forecast
  3. Customer agrees not to provide container capacity to Transactional Shippers before satisfying all Base Load and Surge Volume requirements for Committed Shippers.

## **E. Pricing**

1. Base Load Prices are applicable for all volume tendered in markets that are not Constrained.
2. A Volume Surcharge will be added to the Base Load Price for all Weekly Shipment Volume tendered in a Constrained Market above the weekly Base Load Volume plus Surge Volume Allowance.
3. Volume Surcharge rates in each market will be defined in the Term Sheet. UP and the Customer may agree to defer finalization of Volume Surcharge rates and terms to a later period in order to more accurately reflect market conditions.

## **F. Reporting**

UP will publish weekly performance reports to be distributed to both the Customer and Shipper that will be the basis for determining compliance with the terms of this Agreement by all parties. Reports will summarize actual Weekly Shipment Volume by Origin Market and lane compared to Award Volumes, Base Load Volumes and Surge Volume Allowances. The reports will also be the basis for determining the applicability of any Volume Surcharges.

## **G. Equipment Per Diem**

1. Rates and terms for equipment per diem will be in accordance with the EMP and UMAX container programs.
2. UP reserves the right to modify equipment per diem during the term of this Agreement, including but not limited to bundling or unbundling of equipment charges in the Base Load Price and increasing daily per diem rates.
3. To the extent that these changes result in a material increase in the total cost to the Customer, UP will consider changes to the Base Load Price to offset the impact of the increased cost.



## H. Remedies

1. UP and Customer will use commercially reasonable efforts to ensure container capacity is provided to meet the Shipper's Base Load Volume and Weekly Volume Forecast.
2. The Customer's sole remedy for non-compliance on the part of UP in satisfying the terms of this Agreement is termination of this Agreement. The Customer should notify UP in writing of its intent to cancel this Agreement due to non-compliance on the part of UP. In no case shall UP or Customer be liable for costs or losses or damages, direct, indirect, special, consequential or punitive that result from delay or interruption of rail services or the lack of equipment or train slots. Neither Customer nor Shipper shall be entitled to specific performance by UP or injunctive relief against UP for failure to perform the terms of the MCP Agreement. The MCP Agreement does not guarantee Customer or any Shipper the availability of track capacity, terminal capacity, locomotives, train crews or railroad equipment, including rail cars, chassis or containers.
3. UP's sole remedy in case of non-compliance with the terms of this Agreement on the part of the Customer and/or Shipper will be cancellation of this Agreement. UP will notify Customer in writing if UP intends to terminate this Agreement. Prior to cancellation, UP may in its sole discretion seek to renegotiate the rates and terms of the Agreement. Nothing herein requires UP to seek renegotiation prior to termination.
4. Customer and/or Shipper will be considered to be in non-compliance with this Agreement if any of the following occur:
  - a) Customer or Shipper fails to ship at least 75% of the weekly Base Load Volume during any consecutive 4-week period during the Commitment Term.
  - b) Customer or Shipper rebids freight committed to UP under terms of this Agreement.
  - c) Customer diverts freight committed to UP under terms of this Agreement to another rail service provider, except for reasons of weather, service interruption, force majeure or UP's failure to provide equipment capacity.
  - d) Customer does not provide its available container capacity to support the Shipper's capacity requirements, as defined in this Agreement.
  - e) Customer tenders Shipper's volume to UP using Transactional Pricing or a different MCP price document not associated with this Agreement.
5. UP reserves the right to cancel pricing in any individual lane if actual Weekly Shipment Volume is below 75% of the weekly Award Volume measured over any consecutive four-week period.

## I. Definitions:

**Award Volume:** Business that has been awarded and committed to UP by the Customer and Shipper in accordance with the terms of this Agreement. Defined by origin city, destination city and annual/monthly or weekly volume.

**Base Load Price:** Ramp-to-ramp or door-to-door price that is applicable for Base Load Volume.



**Base Load Volume:** At the time of the award, Base Load Volume is the average weekly volume that is expected to be tendered to UP on a regular, consistent basis throughout the year in accordance with the terms of this Agreement. As actual volumes vary throughout the year, Base Load Volume will be recalculated in accordance with terms of the MCP Agreement Term Sheet. Base Load Volume will not change from week to week once a market has been declared constrained.

**Commitment Term:** The term of an MCP Agreement, generally 1 year.

**Committed Shipper:** Shipper who is a participant in the MCP Program.

**Constrained Market:** An Origin Market that has been determined by UP to have insufficient container capacity to meet expected demand by both Committed and Transactional Shippers.

**Intermediary Customers (Customers):** Transportation intermediaries including Intermodal Marketing Companies (IMCs), Motor Carriers, Truck Brokers, 3PLs, etc., that are customers of Union Pacific Railroad and/or its subsidiaries including Streamline LLC, that manage intermodal freight transportation on behalf of Shippers.

**Lane:** Refers to an origin-to-destination pair where UP provides ramp-to-ramp or door-to-door intermodal transportation service with origin and destination referring to a metropolitan area.

**MCP Agreement:** A commercial arrangement between Union Pacific, one or more Intermediary Customers and a Shipper that documents an agreement whereby UP and the Customer(s) agree to provide committed rail container capacity and pricing in exchange for a defined volume of committed business from the Shipper. The MCP Agreement is documented by this MCP Master Agreement and an MCP Agreement Term Sheet.

**MCP Agreement Term Sheet:** A document that is associated with an MCP Agreement that defines specific characteristics of an MCP Agreement, including the Commitment Term, Award Volume, Base Load Prices, Surge Volume Allowance rates and terms and a Weekly Volume Forecast.

**MITA:** UP's Master Intermodal Transportation Agreement which can be found on UP's website at the following link: <http://www.uprr.com/customers/intermodal/mita.shtml>.

**Origin Market:** A city or metropolitan area that is served by one or more UP intermodal terminals that is an origin point for freight transportation. Generally, all UP terminals located in that city or metro area are considered to be part of a single Origin Market.

**Shipper:** Entity or organization utilizing one or more Intermediary Customers to manage and execute intermodal freight transportation on its behalf.

**Surge Volume:** Shipment volume that is tendered to UP during a week from a single Origin Market that is in excess of the Base Load Volume plus Surge Volume Allowance.

**Surge Volume Allowance:** An allowance measured as a percent above the weekly Base Load Volume for which the Base Load Price is valid in a Constrained Market. For example, if the Base Load Volume is 50 loads per week and the Surge Volume Allowance is 10%, then the Surge



Volume Allowance is five loads and a total of 55 (50 + 5) loads can be shipped at the Base Load Price in a Constrained Market per week.

**Transactional Shippers:** Shippers who are not participants in the MCP Program or who are shipping freight on UP in lanes that have not been committed to UP through terms of an MCP Agreement.

**Volume Surcharge:** A surcharge that is applied to all volume that is shipped during the week from a Constrained Market that is above the Base Load Volume plus Surge Volume Allowance for that market.

**Weekly Shipment Volume:** Actual volume shipped under this Agreement as measured on a weekly basis.

**Weekly Volume Forecast:** A weekly forecast of shipment volume by Origin Market location or by lane that is provided to UP by the Customer or Shipper that most accurately reflects the expected shipment volume for each week during the term of the award.

